

Exh. A

City of Houston, Texas, Ordinance No. 2020 - 1033

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE I, OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RECOGNIZING AND AFFIRMING THAT CERTAIN PROVISIONS OF ARTICLES VII-a AND VII-b OF THE CITY OF HOUSTON'S CHARTER PERTAINING TO THE QUALIFIED VOTER STATUS OF PETITION CIRCULATORS ARE UNCONSTITUTIONAL AND UNENFORCEABLE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston's Charter (the "City Charter") authorizes direct legislation by the public through the initiative and referendum petition process (Article VII-b, Sections 2 and 3) and authorizes the removal from office of any holder of public office in the City by recall petition (Article VII-a); and

WHEREAS, Articles VII-a and VII-b of the City Charter provide that each signature on an initiative, referendum, and recall petition must be acknowledged (notarized) as required by Article IX, Section 3, of the City Charter, or verified with an affidavit by a circulator of the petition; and

WHEREAS, the form of a petition circulator's affidavit for initiative, referendum, and recall petitions is set forth in Article VII-a, Section 3 of the Charter; and

WHEREAS, Articles VII-a and VII-b of the Charter require all signers of a petition to be qualified voters registered to vote in the City of Houston (the "Charter Requirement"); and

WHEREAS, in *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 119 S.Ct. 636 (1999) ("Buckley"), the United States Supreme Court held, among other things, that a Colorado statute requiring that initiative-petition circulators be registered voters violated the First Amendment free speech guarantee; and

WHEREAS, the Fifth Circuit, in *Pool v. City of Houston*, 19-20828, 2020 WL 6253444 (5th Cir. Oct. 23, 2020), opined that absent Houston City Council action, it is not clear that the City has changed its policy and will comply with *Buckley*; and

WHEREAS, the City of Houston accepts petitions circulated by individuals who are not registered to vote in the City, provided the circulators complete the "Affidavit for Circulators Who Are Not Registered Voters of the City of Houston"; and

WHEREAS, the City Secretary's website contains a link to the City's Affidavit for individuals who are not registered voters of the City; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings of fact contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance for all purposes.

Section 2. That Article I of Chapter 2 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Section 2-3.1 that reads as follows:

"Sec. 2-3.1. Petition circulator affidavits.

(a) It is the policy of the city to enforce the United States Constitutional requirements relating to petition circulator qualifications.

(b) The city shall accept the 'Affidavit for Circulators Who Are Not Registered Voters of the City of Houston,' in the form set forth below.

STATE OF TEXAS §

COUNTY OF HARRIS §

I, _____, being first duly sworn on oath depose and say:

I am a circulator who is not registered to vote in the City of Houston. I hereby subject myself to the jurisdiction of the Courts of Texas in connection with any allegation of fraud or misrepresentation associated with the circulation of any initiative, referendum, or recall petition or the collection of signatures for any initiative, referendum, or recall petition circulated in the City of Houston by me. I am a citizen of the United States or a documented permanent resident; I have never been convicted of the crimes of fraud or misrepresentation; I agree to submit myself to the jurisdiction of the Harris County courts and waive any challenge to venue and personal jurisdiction in connection with the matters encompassed by this affidavit. Should the need for me to personally appear in Houston arise, I agree to make myself available in person in Houston, at my own expense, within 72 hours of a request by the City of Houston concerning matters encompassed by this affidavit. I further depose and say that each signature appearing on this petition was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.

Name: _____

Address: _____

Contact Number: _____

Email Address: _____

Sworn to and subscribed before me this ____ day of _____,
_____,
Year Month

/s/ _____
Notary Public, State of Texas

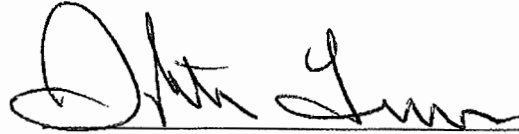
(c) The city secretary shall post a link to the 'Affidavit for Circulators Who Are Not Registered Voters of the City of Houston' on the city secretary's website."

Section 3. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4 That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor;

therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 2nd day of December, 2020.



Mayor of the City of Houston

DocuSigned by:

Tracy Calabrese

Prepared by Legal Dept.

TBC:asw 11/3/2020

Requested by Ronald C. Lewis, City Attorney

L.D. File No. 0392000313001

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Senior Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: DEC - 8 2020

I, PAT J. DANIEL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance No. 2020-1033, passed and adopted by the City Council of said City on the 2nd day of December, 2020, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 18th day of March, 2021.



Pat J. Daniel
City Secretary